

JURISDICTION OVER CRIMINAL OFFENSES COMMITTED BY MEMBERS OF ARMED FORCES

Exchange of notes at London July 27, 1942

Entered into force August 6, 1942

Expired March 2, 1946¹

57 Stat. 1193; Executive Agreement Series 355

The Secretary of State for Foreign Affairs to the American Ambassador

FOREIGN OFFICE, S.W. 1.

27th July, 1942

No. W 10338/13/64

YOUR EXCELLENCY,

Following the discussions which have taken place between representatives of our two Governments, His Majesty's Government in the United Kingdom are prepared, subject to the necessary Parliamentary authority, to give effect to the desire of the Government of the United States that the Service courts and authorities of the United States Forces should, during the continuance of the conflict against our common enemies, exercise exclusive jurisdiction in respect of criminal offences which may be committed in the United Kingdom by members of those Forces, and they are ready to introduce in Parliament the necessary legislation for this purpose.

2. It is appreciated, however, that cases may arise where for particular reasons the American authorities may prefer that their courts should not exercise the above jurisdiction, and His Majesty's Government would accordingly propose that in any case in which a written communication to that effect is received from the Diplomatic Representative of the United States it should be open to the appropriate British authority to restore the jurisdiction of the courts of the United Kingdom to deal with that case.

3. In view of the very considerable departure which the above arrangements will involve from the traditional system and practice of the United Kingdom there are certain points upon which His Majesty's Government consider it indispensable first to reach an understanding with the United States Government. I have accordingly the honour to invite Your Excellency

¹ Six months after armistice with Japan (see para. 10). (EAS 493, *ante*, vol. 3, p. 1251.)

to be so good as to lay the following enquiries and observations before your Government and to inform me of their attitude thereupon.

4. In the first place, the readiness of His Majesty's Government in the United Kingdom to agree to the exercise by United States Service courts of exclusive jurisdiction in respect of offences by members of their Forces is based upon the assumption that the United States Service authorities and courts concerned will be able and willing to try and, on conviction, to punish all criminal offences which members of the United States Forces may be alleged on sufficient evidence to have committed in the United Kingdom, and that the United States authorities are agreeable in principle to investigate and deal with appropriately any alleged criminal offence committed by members of the United States Forces in the United Kingdom which may be brought to their notice by the competent British authorities, or which the American authorities may find to have taken place.

5. Secondly, His Majesty's Government will be glad if you will confirm their understanding that the trial of any member of the United States Forces for an offence against a member of the civilian population would be in open Court (except where security considerations forbade this) and would be arranged to take place promptly in the United Kingdom and within a reasonable distance from the spot where the offence was alleged to have been committed, so that witnesses should not be required to travel great distances to attend the hearing.

6. Thirdly, His Majesty's Government propose that no member of the United States Forces should be tried in the United Kingdom by a Service court of the United States of America, for an offence committed by him before the 7th December, 1941.

7. Fourthly, while His Majesty's Government in the United Kingdom would not wish to make the arrangements in regard to jurisdiction over members of the United States Forces in this country dependent upon a formal grant of reciprocity in respect of United Kingdom Forces in the territory of the United States of America, I feel that you will appreciate that the considerations which have convinced His Majesty's Government in the United Kingdom that the interests of our common cause would be best served by the arrangements which they are prepared to make as regards jurisdiction over American forces in the United Kingdom would be equally applicable in the case of British forces which in the course of the war against our common enemies may be stationed in territory under American jurisdiction. It would accordingly be very agreeable to His Majesty's Government in the United Kingdom if you were authorised to inform me that in that case the Government of the United States of America will be ready to take all steps in their power to ensure to the British forces concerned a position corresponding to that of United States Forces in the United Kingdom under the arrangements which His Majesty's Government are willing to make. The considerations indicated in paragraph 2 above would naturally apply and His Majesty's

Government would be prepared to authorise the Diplomatic Representative of His Majesty in the United States to notify the competent American authorities in cases where the appropriate British authorities preferred not to exercise jurisdiction.

8. Fifthly, the proposal to ensure to the United States Service courts and authorities by legislation the exclusive exercise of jurisdiction in respect of criminal offences by members of the United States Forces in the United Kingdom is based upon the further assumption that satisfactory machinery will be devised between the competent American and British authorities for such mutual assistance as may be required in making investigations and collecting evidence in respect of offences which members of the United States Forces are alleged to have committed, or in which they are alleged to be concerned. His Majesty's Government have no doubt that the United States Government will agree that it would as a general rule be desirable that such preliminary action should be taken by the British authorities, on behalf of the American authorities, where the witnesses or other persons from whom it is desired to take statements are not members of the United States Forces. Conversely, His Majesty's Government trust that they may count upon the assistance of the American authorities in connection with the prosecution before British courts of persons who are not members of the United States Forces where the evidence of any member of these Forces is required or where the assistance of the American authorities in the investigation of the case (including the taking of statements from the American forces) may be needed.

9. His Majesty's Government in the United Kingdom are prepared to extend the proposed legislation where necessary to British Colonies and Dependencies under their authority, other than those British territories in which are situated the United States Military and Naval Bases leased in pursuance of the Agreement of the 27th March, 1941,² where the question of jurisdiction is already regulated by that Agreement. I accordingly propose that the foregoing paragraphs of this note, and your eventual reply, should be regarded as extending also to the arrangements to be made in the British Colonies and Dependencies to which the proposed legislation may be applied.

10. Finally, His Majesty's Government propose that the foregoing arrangements should operate during the conduct of the conflict against our common enemies and until six months (or such other period as may be mutually agreed upon) after the final termination of such conflict and the restoration of a state of peace.

11. If the foregoing arrangements are acceptable to the United States Government, I have the honour to propose that the present note and your reply be regarded as constituting an agreement between the two Governments

² EAS 235, *ante*, p. 560.

to which effect shall be given as from the date on which the legislation to which I have already referred takes effect.³

I have the honour to be, with the highest consideration,

Your Excellency's obedient Servant,

ANTHONY EDEN

His Excellency

The Honourable

JOHN G. WINANT,

etc., etc., etc.

1, Grosvenor Square W. 1.

The American Ambassador to the Secretary of State for Foreign Affairs

EMBASSY OF THE

UNITED STATES OF AMERICA

London, July 27, 1942

No. 1919

SIR:

I have the honor to refer to your note of July 27, 1942, in which you inform me that His Majesty's Government in the United Kingdom is prepared, subject to the necessary Parliamentary authority, to give effect to the desire of the Government of the United States that American authorities have exclusive jurisdiction in respect to criminal offences which may be committed in the United Kingdom by members of the American Forces. I now have the honor to inform you that my Government agrees to the several understandings which were raised in your note.

In order to avoid all doubt, I wish to point out that the Military and Naval authorities will assume the responsibility to try and on conviction to punish all offences which members of the American Forces may be alleged on sufficient evidence to have committed in the United Kingdom.

It is my understanding that the present exchange of notes is regarded as constituting an agreement between the two Governments to which effect shall be given as from the date on which the necessary Parliamentary authority takes effect.

Accept, Sir, the renewed assurances of my highest consideration.

JOHN G. WINANT

The Right Honorable

ANTHONY EDEN, M.C., M.P.,

Secretary of State for Foreign Affairs,

Foreign Office, S.W. 1.

³ The United States of America (Visiting Forces) Act, 1942 (5 & 6 Geo. 6.C.31) became effective on Aug. 6, 1942.